

# **EXHIBIT B**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 STATE OF NEW YORK, *et al.*,

4 Plaintiffs,

5 v.

25 Civ. 2990 (ER)

6 UNITED STATES DEPARTMENT OF  
7 EDUCATION, *et al.*,

8 Defendants.

Oral Argument

9 New York, N.Y.  
May 6, 2025  
10:00 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

15 Attorneys for Plaintiffs

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(Case called)

THE DEPUTY CLERK: Counsel, please state your names for the record.

MR. AMER: Good morning, your Honor. Andrew Amer with the New York Attorney General's Office. I'll be presenting the argument for the plaintiffs today.

THE COURT: Good morning.

MR. AMER: Good morning.

MR. THOMPSON: Good morning, your Honor. Stephen Thompson, also from the New York State Office of the Attorney General.

MR. CONNOLLY: Good morning, your Honor. Christopher Connolly from the US Attorney's Office on behalf of defendants.

MR. KUMAR: Good morning, your Honor. Dana Kumar, also from the U.S. Attorney's Office of the Southern District of New York, on behalf of the defendants.

THE COURT: Good morning to you all. This matter is on for a hearing on the request for a preliminary injunction brought on behalf of the State of New York, 15 other states, and the District of Columbia.

Mr. Amer, I'll hear you.

MR. AMER: Thank you, your Honor.

Again, for the record, Andrew Amer with the New York Attorney General's Office.

On March 28th of this year, your Honor, the Department

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1 of Education and Secretary McMahon pulled the rug out from  
2 under the plaintiff-states when they cut short by a full year  
3 the period for the states to draw down on nearly \$1 billion of  
4 education-stabilization funding that Congress had appropriated  
5 and that the Education Department had already awarded to them.  
6 And without even a minute's advance notice, the defendants  
7 declared that the states' window to liquidate those funds had  
8 already expired, a full year before the extensions had  
9 permitted them to draw down on those funds.

10 The Department's actions have upended ongoing programs  
11 and projects intended to address the devastating impact of  
12 COVID-19 on K-12 students and teachers. Our motion asks the  
13 Court to preliminarily enjoin this agency action in order to  
14 maintain status quo pending resolution of this case.

15 I'd like to first address irreparable harm if that's  
16 okay with the Court, but I did want to just briefly review how  
17 we got to where we are.

18 THE COURT: Very well.

19 MR. AMER: A few years ago, your Honor, the states  
20 submitted detailed grant applications for funding under COVID  
21 appropriation laws, which the Department approved, confirming  
22 that the projects were eligible under the appropriating  
23 legislation. The Department awarded billions of dollars in  
24 funding under this appropriation statute. For example, just to  
25 name two of the appropriations, the two that received the

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1 largest amounts, California received an appropriation of—an  
2 award of \$15 billion, New York received an award of \$9 billion.  
3 The states then submitted extension requests, providing  
4 detailed explanations for why they needed more time to draw  
5 down on these funds. As an example of these extension  
6 requests, the Court can look at Exhibit 4 to the New York  
7 declaration, which is Docket No. 26. It's quite detailed.

8 The Department granted the states' extension requests  
9 based on specifically finding that the states had provided  
10 sufficient justification and documentation and extended the  
11 liquidation period for an additional 14 months, through March  
12 of 2026. Now the state education agencies relied on both the  
13 initial grant awards and the extension approvals through March  
14 of 2026 in planning their budgets, in developing and launching  
15 programs and projects using the funding, and in entering into  
16 contracts with vendors. Programs and projects were ongoing  
17 when the extension approvals were rescinded on March 28th.

18 THE COURT: Can I ask just a couple of questions on  
19 that.

20 MR. AMER: Certainly.

21 THE COURT: First of all, I don't believe that this is  
22 an issue in this case, but were there any restrictions on how  
23 the funds could be used by the local and state school  
24 authorities?

25 MR. AMER: There were, your Honor, because the monies

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1 were appropriated for specific types of programs and projects,  
2 and in seeking the grants in the original applications, the  
3 state education agencies had to describe the projects and  
4 programs that were going to be funded by this money. And so  
5 when the state education agencies seek reimbursement for funds  
6 during their window, they need to show that the projects are  
7 the same ones for which the funds were granted. In other  
8 words, it has to match; the reimbursement request has to match  
9 up with what the grants were awarded for in the first instance.

10 THE COURT: So you have to provide receipts, as it  
11 were.

12 MR. AMER: Yes. Effectively, yes.

13 THE COURT: And then some of these projects were for  
14 infrastructure projects, correct?

15 MR. AMER: That's correct. In the appropriating  
16 legislation, there was money that was made available for  
17 improving facilities—for example, ventilation. It was all  
18 intended to address the need to prevent the spread of virus,  
19 not only for COVID-19 but in the future, for whatever other  
20 viruses might happen in the future.

21 THE COURT: And as I understand it, the monies for  
22 which you received an extension, I guess you received an  
23 extension to draw those monies down, correct?

24 MR. AMER: Correct. The initial 120-day period in the  
25 statute ran the end of January of 2025, I believe, and Congress

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1 allowed extensions for another 14 months, and when those  
2 extension requests were made, they were quite detailed. Like I  
3 said, if you look at Exhibit 4 to the New York declaration,  
4 you'll see it's very detailed. And there was a specific  
5 finding by the Education Department when granting those  
6 extension requests that sufficient justification and  
7 documentation had been provided.

8 THE COURT: And the monies that we're talking about  
9 for which you requested an extension to liquidate, were those,  
10 in what I understand government parlance to be, appropriated  
11 funds?

12 MR. AMER: They were not only appropriated funds, they  
13 were funds that had already been awarded in the grant award  
14 notifications, so they were monies that the states understood  
15 they were already entitled to under the grants. They just  
16 hadn't tapped them yet, they hadn't liquidated them yet,  
17 because their projects were ongoing and this is a  
18 reimbursement-type process.

19 THE COURT: And again, it doesn't appear to be part of  
20 the dispute here, but to your knowledge, did the federal  
21 government refuse to reimburse any projects that were submitted  
22 by the various states?

23 MR. AMER: I'm not aware that that happened, and I  
24 would say, your Honor, in fact, prior to February of 2025, the  
25 reimbursement process was automated, and there is evidence in

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1 the record that under that procedure, the states typically  
2 received reimbursement the next business day following the  
3 request. So this was a very cursory ministerial review of  
4 payment requests that just checked to make sure that the  
5 receipts—if we'll call them that—matched up with what the  
6 awards were originally approved for.

7 THE COURT: Okay. So there was no controversy or  
8 dispute concerning the nature of the projects that the various  
9 school authorities engaged in and sought reimbursement for; is  
10 that right?

11 MR. AMER: That's correct. I mean, to the extent that  
12 states were seeking monies for projects that were not eligible,  
13 they wouldn't have been given those funds in the grant award.

14 THE COURT: Okay.

15 MR. AMER: So in addressing irreparable harm, I wanted  
16 to approach this by describing the four buckets of irreparable  
17 harm as we see it, established by the declarations in the  
18 record.

19 First, a portion of the grants go directly to the  
20 state education agencies to cover the cost of administering the  
21 grant programs. We're talking about, again, billions of  
22 dollars. It takes a fair amount of overhead to administer the  
23 programs for the local education agencies and the nonpublic  
24 schools that are eligible for this funding. And most notably,  
25 this goes to pay staff to administer these programs. Each



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1 state's administrative apparatus is being adversely impacted by  
2 the agency action, and in fact some administrative arrangements  
3 are already being dismantled by the states, as evidenced by the  
4 declarations, because the funding is now gone as a result of  
5 the Department's actions, and that includes laying off staff  
6 and furloughing staff.

7 THE COURT: And has that already happened?

8 MR. AMER: It has. And I would refer the Court to the  
9 Illinois declaration at paragraph 25—that's Docket No. 18—the  
10 New York declaration at 55-57, paragraphs 55-57, and that's  
11 Docket No. 26. It's happened already, and it's continuing to  
12 happen.

13 Second, programs and services to compensate for lost  
14 instruction time to students are being halted with no ability  
15 of the states to pick up the tab to keep these programs  
16 running. This has real adverse consequences for students and  
17 their ability to catch up for all the lost time due to the  
18 pandemic. It's important, your Honor, to understand that due  
19 to budget timing, the states are simply not in a position to  
20 consider now whether and how the states and their legislatures  
21 might be able to appropriate funds to continue these programs  
22 because the states never needed to pursue that option, given  
23 that the federal government stepped up to the plate and,  
24 through the American Rescue Plan, made these funds available.  
25 So this is a lost opportunity for the states that translates

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1 into irreparable harm. And unfortunately, it's just too late  
2 for the states to step in and consider being able to continue  
3 these vitally important programs for students.

4 Third, vendors, local education agencies, and  
5 nonpublic schools have already incurred expenses that they were  
6 expecting would be reimbursed from the grant monies, but they  
7 are now left holding the bag because the funding is no longer  
8 available. Now this exposes the states to potential lawsuits,  
9 which of course have attendant defense costs. And that's in  
10 the record, the New York declaration, paragraph 61. Again,  
11 it's Docket No. 26.

12 THE COURT: What is a nonpublic school?

13 MR. AMER: Nonpublic schools are religious schools and  
14 private schools.

15 THE COURT: Okay. And the various acts don't make any  
16 distinctions between those entities.

17 MR. AMER: Actually, there are three different  
18 programs that are involved here. It will test my memory of the  
19 acronyms, but there are the ESSER funds, which is public  
20 schools; there's the Homeless Children and Youth; and then  
21 there's the EANS program, and that is for the nonpublic  
22 schools, the final one.

23 Fourth, your Honor, the vendors are refusing to  
24 perform services under existing contracts. This includes  
25 contractors who are just walking off construction projects,

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1 leaving schools with areas that are unusable and unsafe. In  
2 fact, the New York declaration at paragraphs 47-49 attests to  
3 the fact that there are some facilities that now have gaping  
4 holes in the walls and the ceiling because ventilation upgrade  
5 projects have been halted since the contractors have walked off  
6 the site in light of the March 28th letter rescinding the  
7 extension approvals. This clearly adversely affects the  
8 states' ability to provide for the basic educational needs of  
9 their students.

10 Now the defendants have basically one response to all  
11 of this harm. Their response is that in fact there is no  
12 irreparable harm here because the states can seek  
13 project-specific extension requests. So let me be clear. It's  
14 our position that there simply is no equivalence between the  
15 right that the states had to submit timely payment requests  
16 prior to 5 p.m. on March 28th, which were subject to this  
17 cursory ministerial review, and their ability now under this  
18 new process to ask for project-specific extensions. Before the  
19 rescission letter, state education agencies had to submit a  
20 fairly—had to submit these payment requests, and as I  
21 mentioned, they were subject to pretty ministerial, minimal  
22 review, and in fact, states were receiving payment within the  
23 next business day when it was done on an automated process.  
24 Post-rescission letter, this new process that the defendants  
25 contend is just as good clearly is not. The states are

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1 stripped of their ability to submit payment requests that are  
2 viewed as timely, and instead they now must submit extension  
3 requests all over again. They're starting from square one.  
4 And they have to do so on a project-specific basis, which was  
5 never the case in terms of how they had to request the prior  
6 extensions. Each project must be—each project-specific  
7 request must be supported by detailed information, as listed in  
8 the Department's April 3rd letter, and it has to include a  
9 justification as to why the Department should grant the  
10 extension.

11 THE COURT: But hadn't that already been done? In  
12 order to qualify for payment in the first instance, didn't you  
13 have to submit information concerning the projects that you  
14 wanted to undertake and why they were within the purview of the  
15 funding statutes? Wasn't that already done?

16 MR. AMER: Absolutely, your Honor. In fact, what was  
17 done prior, if you include the original application for the  
18 grant, was even more extensive. But yes, all of that. It  
19 simply ignores the history here of the Department having  
20 already approved the grants initially and then approving the  
21 prior extension requests, and those extension requests were  
22 granted based on specific findings by the Department that each  
23 state had provided a sufficient justification and  
24 documentation.

25 THE COURT: Can you give me an idea of how many

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1 different projects, say, California and New York were running  
2 that were subject to these programs?

3 MR. AMER: We have in the record spreadsheets, and I  
4 can get the number for you, but if you look at Exhibit 4 to the  
5 New York declaration, you'll see all of the projects that are  
6 the subject of the extension requests. It's dozens for both of  
7 those states, because they're large states, obviously. And the  
8 amount of money that was remaining for this funding as of  
9 March 28th is tens of millions for some states and more than a  
10 hundred million for other states. So New York, for example,  
11 was about 134 million, I think. A number of states had eight-  
12 and nine-figure sums left on their funding to draw down on. So  
13 still a significant amount of money we're talking about here,  
14 your Honor, as of the date of the rescission letter.

15 THE COURT: And was it the intent of the various  
16 agencies to ultimately draw down all of those funds or were  
17 there going to be some left over?

18 MR. AMER: I believe it was the intent to use all the  
19 funds, but, you know, it's possible that come March of 2026,  
20 they might not have tapped all of the funding, but I think it  
21 was certainly the intent to do so.

22 The new process also runs contrary to the urging of  
23 the Senate Committee on Appropriations. That committee had  
24 urged the Department to adopt a procedure for extension  
25 requests that would impose minimal burden on the states, and in

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1 fact, that was the case for the prior extension request round,  
2 if you will. There's simply no indication in the record, your  
3 Honor, of how long this new process—which is a six-step  
4 process of review, including two different levels of management  
5 within the Department that's outlined in the April 3  
6 letter—simply no indication in the record of how long that  
7 review would take, nor do we know how likely it is that any  
8 project-specific extension will be approved.

9 In short, your Honor, the new process gives the states  
10 no assurance or comfort that they will be able to liquidate  
11 anywhere close to the funding that was awarded and that  
12 remained unliquidated, and they will have no clarity on that  
13 issue any time soon, given this six-step process that the  
14 Department purports they will undertake.

15 I would also mention, your Honor, that both the  
16 administration and Secretary McMahon have mentioned any number  
17 of times in public that the ultimate goal here is to completely  
18 dismantle the Department of Education. That's something the  
19 Court can take judicial notice of. It's been reported in the  
20 press widely. And they make no—they don't dispute that that's  
21 the ultimate goal. That does not bode well, your Honor, for  
22 the prospect of this new process and its review happening in a  
23 prompt and timely manner. We submit, your Honor, that what is  
24 really going on here is that the Department is trying to just  
25 wipe the slate clean and get a do-over, not just on the prior

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1 decision to grant the extensions but also to award the grants  
2 in the first instance. That is clear from the Department's  
3 April 3 letter, which requires states seeking project-specific  
4 extension under this new process to explain how a particular  
5 project is necessary to mitigate the effects of COVID rather  
6 than just focusing on why they need more time.

7 I did want to mention, by the way, just to circle  
8 back, New York had approximately 85 projects underway for those  
9 three funding programs that I mentioned.

10 I want to move next to the likelihood of success  
11 prong, your Honor, and address first the threshold question  
12 that defendants have raised of whether this is a final agency  
13 action subject to review under the APA. This case focuses on  
14 the Department's two determinations conveyed in the March 28th  
15 letter—the first being the rescission of the prior approvals,  
16 and the second, the determination to declare that the  
17 liquidation periods already expired as of 5 p.m. on March 28th.  
18 We submit there is absolutely nothing tentative about those  
19 determinations. They are not subject to any further agency  
20 action. And those two determinations have immediate legal  
21 consequences for the states. The states no longer have the  
22 right to submit timely payment requests to liquidate their  
23 grant funds that would be subject to a cursory ministerial  
24 review. Now the defendants conflate these two determinations  
25 with some future decision that the Department may reach about

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1 whether to grant extensions on a project-specific basis, but  
2 that's an entirely different agency action and it's simply not  
3 relevant to the question of whether the two determinations  
4 encompassed in the March 28th letter are now final. But I  
5 would add, your Honor, that even if the Court considers this  
6 new process of seeking project-specific extensions to be some  
7 sort of reconsideration of the March 28th determinations, the  
8 APA expressly forecloses their argument that it's not final  
9 under Section 704 because that section says that even if  
10 there's reconsideration, it doesn't make agency action nonfinal  
11 unless the agency action is inoperable pending the outcome of  
12 the reconsideration. And here, they say it's effective  
13 immediately, not that it's inoperable.

14 So for those reasons, your Honor—

15 THE COURT: In other words, if the Department of  
16 Education were to say, we are rescinding the grants that were  
17 made in two weeks, for example—

18 MR. AMER: I think it would have to be more than that.  
19 I think, under Section 704, they would have to say, we are  
20 going to rescind subject to this process of a project-specific  
21 extension, and our rescission remains inoperable pending our  
22 consideration and decision on any project-specific extension  
23 you want to make.

24 THE COURT: So status quo continues, and you can  
25 submit the requests for reimbursement in the meantime.



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1 MR. AMER: Exactly right, your Honor, and it makes  
2 sense that Section 704 says that because it by design means  
3 that there's no impact of the agency action until this  
4 reconsideration process plays out and there's a definitive  
5 determination.

6 Another threshold issue that defendants have raised is  
7 prudential ripeness. For the same reason that the agency  
8 action is final, we believe that it's also fit for review by  
9 this Court because there's nothing more that the agency need do  
10 in terms of its consideration, and absent the Court's review,  
11 the states will endure the hardship of the irreparable harm  
12 that I've already discussed. And so those are the two prongs  
13 of the prudential ripeness test that are clearly met here.

14 I wanted to turn next to the substantive claims under  
15 our likelihood of success prong and just talk about the two APA  
16 claims, the first being arbitrary and capricious. Your Honor,  
17 this is a classic case of an agency changing position without  
18 complying with the change in position doctrine that requires a  
19 reasoned explanation and accounting for the significant  
20 reliance interest of the plaintiff. And I should mention that  
21 the Supreme Court has very recently discussed this change in  
22 position doctrine in the *FDA v. Wages & White Lion Invs.* case  
23 that was decided April 2nd of this year; that's at 2025 WL  
24 978101. The March 28th letter provides the only explanation  
25 from the Department for its about-face on the extension

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1   approvals, and their explanation boils down to saying that  
2   because the pandemic is over, there's no extra time warranted  
3   for the states to have in order to liquidate hundreds of  
4   millions of dollars that remain in funding. This makes no  
5   sense, for two reasons, your Honor.

6           First, the end of the pandemic is not a new  
7   development. The federal government declared the pandemic to  
8   be over in May of 2023. That's when the health emergency was  
9   declared at an end. That is long before the Department granted  
10   the extensions that it is now rescinding, and some of those  
11   extensions were granted as recently as January and February of  
12   this year, so 2025. So there's nothing new here that would  
13   justify and provide a reasoned explanation in terms of the  
14   timing of the health emergency being over.

15           Second, the state education agencies, as the Court has  
16   already noted, previously provided, and the Department already  
17   accepted as warranted, the explanations given by the states in  
18   support of the prior extension requests for why more time was  
19   needed to put these funds to use. And I'll just give you two  
20   examples.

21           The states previously explained that they needed more  
22   time to implement and continue programs like after-school  
23   classes and summer school and extended school year programs to  
24   make up for lost instruction time. The fact that the pandemic  
25   ended in 2023 didn't obviate the need for this critical

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1 intervention to help the students catch up from the pandemic  
2 and the lost instruction time.

3 Another example is that the states already explained  
4 that supply chain disruptions due to the pandemic require them  
5 to take additional time to complete construction projects, like  
6 HVAC upgrades.

7 So those explanations have already been provided and  
8 have already been accepted.

9 The defendants ignore the states' reliance on the  
10 extensions, the second part of the change in position test.  
11 It's clear from the declarations that state education  
12 authorities—agencies and local education agencies factored  
13 into their budgets program planning and contracting with  
14 vendors their ability to continue to liquidate the grant funds  
15 through March of 2026, each of these entities incurring costs  
16 they expected would be reimbursed through timely payment  
17 requests, subject, again, to a cursory ministerial review by  
18 the Department. So in the absence of a reasoned explanation  
19 and no accounting for the substantial reliance interests, it's  
20 clear that this action by the defendants violates the change in  
21 position doctrine.

22 The second substantive claim under the APA is contrary  
23 to law. I'll just briefly mention the two points there that we  
24 think indicate the states are highly likely to succeed on that  
25 claim.

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1 First, Congress clearly intended the funds to remain  
2 available after the end of the health emergency. Congress  
3 specifically did not tie the funds to the continuing existence  
4 of the health emergency, as it did with other COVID funding.  
5 And we cite to a number of statutes on page 24 of our opening  
6 brief that illustrate Congress tying the funds to the health  
7 emergency. So Congress knew how to do it, and didn't do it  
8 here with respect to the American Rescue Plan funds at issue.

9 THE COURT: As I understand it, you say in your papers  
10 at various points that Congress encouraged the Department of  
11 Education to be flexible and to allow these extensions; is that  
12 right?

13 MR. AMER: Yes, that's the Senate Committee on  
14 Appropriations Report that urged the Department to be liberal  
15 with granting extensions and to require minimal burden in terms  
16 of documentation. And that's exactly what happened in terms of  
17 the prior round of extensions.

18 But more to the point, Congress, in enacting the  
19 legislation that appropriated these funds, didn't specifically  
20 tie the availability of the funds to the continuing existence  
21 of the pandemic, like they did in these other statutes that we  
22 cite to on page 24 of our opening brief. And additionally,  
23 Congress did not claw back the funds once the pandemic was  
24 declared over, which is something else that Congress did in  
25 other instances. For example, we note in the Fiscal

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1 Responsibility Act of 2023, Congress pulled back funding that  
2 had not been tapped. So by specifying in the American Rescue  
3 Plan statute that the funds are to address long-term effects of  
4 the pandemic, and by not tying the funds to the end of the  
5 health emergency, and by not clawing the money back as it did  
6 in other instances, it's clear we think that Congress obviously  
7 intended the funds to remain available after the government  
8 declared the health emergency to be over, which shows that the  
9 Department's actions here rescinding the funding and declaring  
10 the window to be already closed is contrary to law.

11 The final two factors of the preliminary injunction  
12 test, your Honor, are public interest and balance of the  
13 equities, and I'll just briefly go over those. As your Honor  
14 is aware, those two factors merge here, because the government  
15 is a party. We submit that because of the strong showing that  
16 the states have made on irreparable harm and likelihood of  
17 success, that's sufficient to establish that an injunction  
18 would in fact be in the public interest. We think, moreover,  
19 there is a strong public interest in preventing the Department  
20 from violating the APA by abruptly rescinding the prior  
21 extension approvals, which afforded the states, until March of  
22 2026—so another additional year—to draw down on this critical  
23 funding intended to combat the devastating long-term effects of  
24 the pandemic on students and educators. And finally,  
25 defendants, for their part, we submit, have not articulated any

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1 harm that they will suffer in maintaining the status quo here,  
2 which, by the way, would simply require the Department to honor  
3 the extension approvals it had previously determined were  
4 justified based on the showing that each state has already made  
5 when requesting the extensions in the first place.

6 THE COURT: If I were to grant the preliminary  
7 injunction, would I have to find likelihood of success both on  
8 arbitrary and capriciousness and contrariness to law?

9 MR. AMER: No, you don't, your Honor. Just any one of  
10 the claims would support entry of a preliminary injunction  
11 under the four-part test. So as long as the Court was  
12 satisfied that at least one of the claims had a likelihood of  
13 success, that would satisfy that prong.

14 In conclusion, your Honor, the states ask the Court to  
15 preliminarily enjoin the defendants from implementing and  
16 enforcing the March 28th rescission letter as against the  
17 plaintiff-states, so that their education agencies can  
18 continue, during the course of this case, to submit timely  
19 payment requests to liquidate their funding just as they had  
20 been doing prior to March 28th. And as the Court will see in  
21 our proposed preliminary injunction order, we also ask that the  
22 Court require the defendants to provide two weeks' notice to  
23 both the Court and to the plaintiffs if they intend to modify  
24 the states' liquidation periods on any other grounds other than  
25 those that are set forth in the rescission letter.

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1 THE COURT: The Department of Education has already  
2 rescinded the grant so you cannot today submit a reimbursement  
3 request in the manner that you could prior to March 28. You're  
4 asking me to enter a preliminary injunction that allows you to  
5 do that. Why, therefore, isn't that a mandatory injunction as  
6 opposed to a prohibitory injunction?

7 MR. AMER: So we think it is a prohibitory injunction.  
8 It's simply asking the Court to maintain the status quo as it  
9 existed before the rescission letter was issued. I think the  
10 defendants' position is that it's a mandatory injunction and  
11 that it requires a heightened showing. We absolutely disagree  
12 with that. This is a classic example of a prohibitory  
13 injunction. It merely seeks to turn the clock back to  
14 5:02 p.m. Eastern time March 28th and have the parties proceed  
15 just as they had been proceeding the minute before the  
16 challenged action took effect.

17 THE COURT: Thank you.

18 MR. AMER: Thank you, your Honor.

19 THE COURT: Mr. Connolly?

20 MR. CONNOLLY: Thank you, your Honor. Good morning  
21 again. Christopher Connolly from the U.S. Attorney's Office on  
22 behalf of the defendants.

23 At the same time that the Department of Education  
24 rescinded its prior extension of the liquidation deadline, it  
25 invited states to seek project-specific extensions of the

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1 liquidation period. It provided further information about that  
2 process just a few days later in its April 3rd letter. The  
3 grant money at issue here is still available to states. To  
4 date, the Department has received over 200 applications from  
5 around 30 states, including at least one of the  
6 plaintiff-states here. The Department has already approved  
7 extensions of the liquidation periods for certain projects.  
8 And where it's declined to approve extensions, states are able  
9 to appeal that declination administratively.

10 THE COURT: But the prior program ended, right? It  
11 was rescinded by virtue of the secretary's determination.

12 MR. CONNOLLY: The prior program didn't end. The  
13 prior extension deadlines that had been extended until March  
14 2026 were ended with the provision that states could then seek  
15 project-specific extensions, which many of them have done and  
16 some of them have already received.

17 THE COURT: And will they receive approval of those  
18 requests if they were to submit an application? Is there a  
19 guarantee that they will receive approval for those programs if  
20 they were to submit an application in accordance with the  
21 secretary's letter?

22 MR. CONNOLLY: So what happens is, states seek an  
23 extension, a project-specific extension; they describe the  
24 project that they're seeking the extension for; the Department  
25 reviews that; and where the Department grants that extension of



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1 the liquidation deadline, then the state proceeds with the  
2 project that it had described, and then will come back to seek  
3 reimbursement for the funds expended as part of that project,  
4 and will presumably have to demonstrate through the receipts  
5 and stuff that, you know, the work that they did was related to  
6 the project that they'd sought the extension for; and then they  
7 would receive the funds.

8 THE COURT: So the answer to my question is no,  
9 there's no guarantee; that if they were to make application  
10 anew with respect to projects that had previously been  
11 approved, there's a possibility that they will not receive  
12 reimbursements for those monies expended.

13 MR. CONNOLLY: As I understand it, that would only be  
14 in the situation where the work that they undertook was not  
15 related to the project that they had explained. The  
16 expectation is that when you get this extension of the  
17 liquidation period, a project-specific extension, the states  
18 have described the specific project that they're going to be  
19 undertaking, that they will then be able to draw down those  
20 funds after they've engaged in the project. So I think the  
21 answer to your Honor would be yes.

22 THE COURT: So then there was no rescission?

23 MR. CONNOLLY: There was a rescission of the March 28,  
24 2026, extension, yes, subject to the ability of states to seek  
25 project-specific extensions, which many of them are in the

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1 process of doing, and which the Department is in the process of  
2 reviewing.

3 THE COURT: But if these projects were already  
4 preapproved or approved prior to the rescission of March 28th,  
5 why would they have to reapply?

6 MR. CONNOLLY: Your Honor, as I understand it, when  
7 the states initially sought these funds, they would describe,  
8 perhaps in more general terms, the types of projects that they  
9 were intending to undertake in connection with these  
10 appropriations. What the Department is asking states to do  
11 here is, to the extent that they require additional time to  
12 draw down some of those funds, to identify and describe the  
13 specific projects that remain at issue. And then the  
14 Department is considering those on a project-specific basis,  
15 and where it determines it's appropriate, it is extending those  
16 liquidation periods for those projects.

17 THE COURT: So again, I believe I asked Mr. Amer  
18 whether the states had undergone that process in the first  
19 instance, and I believe his answer was that yes, that the  
20 states did, in accordance with the contours of the funding  
21 programs, submit proposed projects, which were approved, and  
22 for which they simply had to submit the receipts, as I put it,  
23 in order to be reimbursed for the completion of those projects.  
24 So what you are saying, I think, is that, well, you have to do  
25 that again, right?

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1 MR. CONNOLLY: You have to do that again, and as  
2 I—obviously at this point we have the complaint, we have the  
3 allegations, and I think broadly, the government agrees with  
4 what Mr. Amer is describing, but I think the distinction is  
5 that those initial applications would not necessarily have gone  
6 into the level of detail about specific projects that the  
7 Department is now asking for in connection with these  
8 project-specific extensions. In some instances perhaps states  
9 described those projects specifically; in other instances it  
10 was perhaps more of a broader indication of the type of work  
11 that they were intending to use the funds for. And now, to  
12 seek to get further extensions of that liquidation period, the  
13 Department is simply asking the states to describe with  
14 specificity the projects for which they require additional  
15 extensions.

16 THE COURT: Again, as I understand it—and to your  
17 point, we only have the complaint, we have several  
18 declarations—not only did they have to initially submit  
19 projects for approval, but when they wanted to extend the time  
20 to be reimbursed, they had to provide additional details as to  
21 why that was necessary, correct?

22 MR. CONNOLLY: The states made applications for  
23 extensions before, yes; not on a project-specific basis, but  
24 they provided some explanation for why they were requesting an  
25 extension of that liquidation period.

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1 THE COURT: And as I read the complaint, in every  
2 instance at least that's cited in the complaint, the response  
3 that they received for approval of an extension was after  
4 careful review or after careful consideration. Do you have any  
5 reason to believe that that did not take place—that is to say,  
6 careful review or careful consideration?

7 MR. CONNOLLY: I have no reason to believe that that  
8 did not take place for the extensions that were described in  
9 the complaint. Again, I mean, taking the allegations in the  
10 complaint as true at this point.

11 THE COURT: Okay.

12 MR. CONNOLLY: So because these grant funds are still  
13 available to the states and because states can continue to seek  
14 and have sought and are obtaining these project-specific  
15 extensions, a preliminary injunction is not appropriate at this  
16 time.

17 I can briefly walk through each stage of the  
18 preliminary injunction analysis, beginning with likelihood of  
19 success. And in particular, there is no final agency action  
20 here. Courts have emphasized that the finality inquiry is  
21 flexible and pragmatic, and here, the rescission of the  
22 extensions on March 28th was coupled, both in the March 28  
23 letter and in the April 3rd letter, with the invitation to  
24 states to seek project-specific extensions. And so contrary to  
25 some of what the states suggest, this is not foreclosing the

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1 opportunity for states to access these funds and to draw down  
2 these funds for the projects that they intended to use them  
3 for; it is inviting them to submit some additional information  
4 about the specific projects, which the Department is reviewing  
5 as they come in and has already started to issue decisions on,  
6 that will allow for the continued extension of the liquidation  
7 period for these specific projects. So whether and to what  
8 extent these states are truly foreclosed from accessing these  
9 funds for the projects that they're intending to undertake  
10 remains an open question, at least until they submit those  
11 extension requests and obtain a decision from the Department  
12 on, you know, whether that liquidation period will in fact be  
13 extended.

14 THE COURT: So it remains an open question and is not,  
15 as I believe you suggested earlier, well, you know, you can put  
16 in your application, you can give reasons why an extension is  
17 needed, and the likelihood is that yes, you will get  
18 reimbursed.

19 MR. CONNOLLY: You put in your application with  
20 respect to a specific project and you seek an extension of the  
21 liquidation period for that, and where the Department grants  
22 that, then you have up until that new deadline to liquidate  
23 funds relating to that project. And then—

24 THE COURT: Where the Department grants that, but what  
25 about where the Department does not?

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1 MR. CONNOLLY: Where the Department denies an  
2 extension request, there is an administrative appeal option.  
3 Within 30 days of that denial, you can appeal within the  
4 Department for further consideration and can submit additional  
5 information in support of your request for an extension of the  
6 liquidation period with respect to that project. And I believe  
7 in our papers we cited to a Department of Education website  
8 that is similar to the April 3rd letter but then builds off it,  
9 providing additional information about the way the process  
10 works and noting, as I believe the April 3rd letter does not,  
11 the ability to appeal within the Department in the event that  
12 an extension request is denied.

13 THE COURT: Okay.

14 MR. CONNOLLY: So because that remains an option for  
15 states and because the possibility continues to exist for  
16 states to obtain these extensions of the liquidation period,  
17 the kind of just the precise issue that the plaintiffs are  
18 challenging here is not one by which rights and obligations  
19 have necessarily been determined. Again, some states have  
20 already applied for extensions of the liquidation period for  
21 certain projects and have obtained them. So now there's a  
22 final agency action that allows them to continue to liquidate  
23 those funds. And for other states, that remains a possibility.

24 THE COURT: Have any applications for extensions been  
25 denied?

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1 MR. CONNOLLY: There have been. As I understand it,  
2 your Honor, a set of applications have been determined at this  
3 point. Some projects have been approved for liquidation  
4 extensions and others, yes, have been denied for extensions.

5 THE COURT: Okay.

6 MR. CONNOLLY: So in light of that flexible and  
7 pragmatic inquiry, the rescission itself on the March 28th  
8 letter of the prior extension should not be considered a final  
9 agency action. But to the extent that it were, it was not  
10 arbitrary and capricious and it was also not contrary to law.  
11 And perhaps I'll take those in reverse order.

12 First of all, with respect to contrary to law,  
13 plaintiffs' argument is—

14 THE COURT: I'm sorry.

15 MR. CONNOLLY: Contrary to law.

16 THE COURT: Contrary to law.

17 MR. CONNOLLY: Pardon me. Plaintiffs' argument is  
18 that where Congress wanted appropriations to terminate with the  
19 end of the public health emergency, it said so, and that's  
20 true. But what the Department is doing here is not terminating  
21 these appropriated funds and it's not cutting off access for  
22 the states to these appropriated funds. Congress did—and we  
23 explain this in our background section in our brief—it did  
24 place at least initial time frames for when these appropriated  
25 funds were supposed to be accessed, and beyond that, by

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1 regulation, the Department can extend those deadlines where  
2 doing so is justified. And it did that, and it is now  
3 continuing to do that.

4 THE COURT: Well, no. It stopped it, and then it  
5 created a different avenue for accessing those funds.

6 MR. CONNOLLY: That is true. I mean, a different  
7 process for determining whether those extensions are justified.  
8 But it's not contrary to the statute, or contrary to these  
9 appropriations, because it's not actually terminating the  
10 states' ability to access these funds. It is simply  
11 implementing a new procedure whereby states can continue to  
12 access those funds, and there's nothing in any of these  
13 appropriations that would preclude the Department from taking a  
14 project-specific look and determining whether, you know,  
15 extension of the liquidation periods is appropriate.

16 THE COURT: Well, except that I'm told that the Senate  
17 explicitly—I don't know what word to use here—directed,  
18 encouraged, told, suggested—that the Department of Education,  
19 in administering these funds, be flexible and be as minimally  
20 intrusive into the states' ability to access these funds as  
21 possible. And that's not what this new process is doing, is  
22 it?

23 MR. CONNOLLY: Respectfully, your Honor, it's not as  
24 intrusive as plaintiffs would suggest. I mean, they talk about  
25 like a six-part process, but really, most of those parts are



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1 just, you know, review within the Department to determine  
2 whether to grant a liquidation extension. For the states, you  
3 see in the April 3rd letter, in many instances the kind of  
4 basic information that they need to supply, as well as, to be  
5 sure, an explanation of the specific project and why a further  
6 extension is necessary. But that's in keeping with the  
7 Department's regulatory authority to grant these extensions  
8 where they're justified. And in the Department's view, given  
9 the time that's elapsed since the end of the public health  
10 emergency, it's appropriate to take a project-specific look at  
11 where states are seeking further extension of the liquidation  
12 period, and that is consistent with or certainly not  
13 inconsistent with the language of the appropriations.

14 THE COURT: And so the Department of Education changed  
15 its mind.

16 MR. CONNOLLY: The Department of Education changed its  
17 mind, and it has the ability to do that.

18 THE COURT: And when it does that, doesn't it have to  
19 provide a reasoned explanation as to why it's changing its  
20 mind?

21 MR. CONNOLLY: It does, and that was what the March 28  
22 letter did.

23 THE COURT: Tell me how it did that.

24 MR. CONNOLLY: The March 28th letter explained that in  
25 light of the end of the public health emergency and in light of

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1 the Department's priorities, it was, as a general matter, no  
2 longer appropriate for extensions of these liquidation periods  
3 to occur, but that states would be able to seek extensions of  
4 those liquidation periods on a project-specific basis that  
5 would allow the Department to evaluate the project in light of  
6 Congress's goals in appropriating these funds.

7 THE COURT: And is that reason sufficient on the facts  
8 of this case? And I say that because, to Mr. Amer's point,  
9 yeah, the COVID emergency is over, but it was over two years  
10 ago, and now all of a sudden they're saying, well, you know, we  
11 shouldn't be using public funds in connection with a pandemic  
12 that's almost two years old now. And also, there's no talk of  
13 this in any of the papers, but, I mean, implicit in these  
14 programs, in these funding programs, is that I think—and you  
15 can tell me if I'm wrong—that there was a loss in educational  
16 attainment by all of these children occasioned by the pandemic  
17 and the requirement that there be remote learning, if learning  
18 there was taking place, and therefore implicit in the funding  
19 was that of course it would go beyond the emergency because it  
20 was only after the emergency that the school authorities would  
21 have the opportunity to address that educational loss.

22 MR. CONNOLLY: I agree that it was implicit that these  
23 funds would continue to be available after the emergency, and  
24 the Department is not preventing these funds from being  
25 available after the emergency. What the Department is doing is

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1 requesting project-specific information from states so that the  
2 Department, at a more, I guess, granular level can determine  
3 whether, given where we are vis-à-vis the pandemic and the end  
4 of the public health emergency, the projects that the states  
5 are seeking to undertake remain consistent with Congress's  
6 goals in appropriating these funds.

7 THE COURT: Okay.

8 MR. CONNOLLY: The decision is also not arbitrary and  
9 capricious. The regulation at issue here, 2 C.F.R. 200.344(c),  
10 specifies that the Department can grant extensions where it is  
11 justified. And again, that is what the Department is doing.  
12 It is granting extensions here, where further extensions are  
13 justified. It has changed its procedures for doing that, but  
14 the change in procedures is within the parameters of the  
15 regulation and, again, not contrary to the appropriation  
16 statutes themselves.

17 Turning to irreparable harm, here again, states can  
18 and have obtained extensions of the liquidation period, so the  
19 scope of the harm and whether and to what extent it is  
20 irreparable remains at some level an open question. To the  
21 extent a state late last week received an extension of the  
22 liquidation period with respect to a project, harms that it  
23 thought might otherwise have been occasioned by the March 28th  
24 letter, that calculus is different now, right?

25 THE COURT: The disruption has already occurred,

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1 right? You would agree with that.

2 MR. CONNOLLY: The states have alleged—and again, we  
3 have their complaint, we have their declarations—that there  
4 has been disruption that has been occasioned by the March 28th  
5 letter, yes. But the question for the irreparable harm prong  
6 is, you know, whether and to what extent the ability to obtain  
7 a further extension of the liquidation period can act upon  
8 those harms and prevent them from being irreparable, and there,  
9 we submit—I mean, one thing that I think to note, your Honor,  
10 is that in their declarations and in their opening brief, the  
11 states don't address the extension, project-specific extension  
12 process that was announced in the March 28th letter and then  
13 discussed further in the April 3rd letter, and that does bear,  
14 of course, on the nature of the harms and whether they're  
15 irreparable.

16 THE COURT: Well, I mean, they do discuss the  
17 project-specific process now in place and say that it imposes  
18 an additional burden. You can argue about whether that's a  
19 real burden or not, but they do address it.

20 MR. CONNOLLY: Right. They do. Absolutely. And  
21 their second brief does address it. But the question here is  
22 whether and to what extent that process acts upon the harms  
23 that they had otherwise articulated and can obviate those harms  
24 through the ability to obtain those project-specific extensions  
25 of the liquidation period.

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1 THE COURT: Okay.

2 MR. CONNOLLY: And finally, and briefly, your Honor,  
3 the public interest and equities factors that are tied together  
4 here. The Department has the ability and there is a public  
5 interest in making sure that these funds are spent consistent  
6 with Congress's appropriations. That's what the Department is  
7 attempting to do here. The language of both the March 28th and  
8 April 3rd letters talks about asking the states for information  
9 on how a particular project's extension is necessary to  
10 mitigate the effects of COVID on American students' education.  
11 The Department is receiving applications from states that speak  
12 to that issue. It is reviewing them in the process that's  
13 described in the letters, and on their website, and it is in  
14 the process of making those determinations and at times  
15 granting those project-specific extensions of the liquidation  
16 period.

17 THE COURT: Could we go back to irreparable harm just  
18 for a minute.

19 MR. CONNOLLY: Certainly.

20 THE COURT: You didn't mention whether or not the  
21 federal government would be irreparably harmed if I were to  
22 issue the injunction. Would it?

23 MR. CONNOLLY: Well, your Honor, I think the  
24 potential—well, a couple things.

25 First of all, beginning with the public interest

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1 articulated, one potential harm here is that states will draw  
2 down funds for projects that the Department, had it reviewed at  
3 a project-specific level, would have determined might not have  
4 qualified for the extension of the liquidation period.

5 THE COURT: Okay. But we're talking about  
6 appropriated funds, correct?

7 MR. CONNOLLY: These are appropriated funds, yes.

8 THE COURT: So these funds were appropriated. Initial  
9 applications were made on particular projects and were granted,  
10 right? They were approved.

11 MR. CONNOLLY: There was an initial project approval,  
12 yes.

13 THE COURT: And then there was a request for an  
14 extension to complete those projects and they had to provide  
15 additional information, and those extensions were approved  
16 after careful consideration, correct?

17 MR. CONNOLLY: As set forth in the complaint, correct.

18 THE COURT: So how is the government irreparably  
19 harmed by just allowing those determinations to stay in place  
20 and projects to go forward? They were appropriated funds.

21 MR. CONNOLLY: Right. I mean, the harm would be that  
22 it would prevent the Department from doing what it has now  
23 determined is appropriate to do, which is to review these  
24 specific projects at a closer level to determine whether they  
25 remain consistent with Congress's goals in appropriating the

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1 funds. In the event that preliminary injunction is entered,  
2 the process that has been stood up, these applications that the  
3 Department is receiving, that would presumably all be put on  
4 hold. The Department would not be able to undertake the review  
5 that it's undertaking subsequent to the March 28th letter.

6 Thank you, your Honor.

7 THE COURT: Thank you.

8 Mr. Amer, did you want to respond?

9 MR. AMER: I do have a few points, your Honor. Thank  
10 you.

11 Your Honor, you raised the question of whether there's  
12 any guarantee that these specific project-specific extension  
13 requests will be granted, and I think there was a suggestion  
14 that they would likely be granted, and I want to put that to  
15 rest based on what we know to date.

16 One of the plaintiff-states that did request some  
17 project-specific extensions was Arizona, and this past Friday,  
18 May 2nd, Arizona received A response by letter to their  
19 extension requests. And we have the letter. I'm happy to file  
20 it on the docket, your Honor, if you'd like to have the letter  
21 on the record.

22 THE COURT: Sure. You can do that.

23 MR. AMER: And there were \$7.6 million, roughly, in  
24 projects that were the subject of these project-specific  
25 extension requests. The Department approved only \$1 million

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1 worth of these projects and denied \$6.6 million worth of these  
2 projects, so the vast majority of the project-specific  
3 extension requests were denied.

4 But I think more telling, your Honor, is the reason  
5 for why the projects were denied. And I'm just going to quote  
6 some of the explanations.

7 There's one project for about \$1.2 million, and it was  
8 denied for the following reason: "This project is providing  
9 resources to teachers rather than directly supporting students  
10 academically." That's the reason that that was denied.

11 For a \$4.9 million project, the extension request was  
12 denied for the following reason: "While this project provides  
13 services to students related to mitigating the effects of the  
14 pandemic, it is focused on health rather than academics." So  
15 that's why that was denied.

16 Another reason for a roughly \$450,000 project was:  
17 "While this project provides support for mathematics teachers,  
18 it does not provide services directly to students."

19 And then the fourth project that was denied for  
20 roughly \$110,000, the same reason as before: "This project is  
21 providing resources to teachers rather than directly supporting  
22 students academically."

23 So these reasons that are being given have nothing to  
24 do with whether additional time is needed to liquidate these  
25 funds. It's really seeking a complete redo of whether the



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1 funds should have been granted in the first place, and it's  
2 completely contrary to what's provided for in the  
3 appropriations statute. If you just look at the American  
4 Rescue Plan statute, it talks about, in Section 2001(e)(2),  
5 what the uses of funds are that are permitted. It clearly  
6 includes professional development for staff, health-related  
7 reasons, so—

8 THE COURT: These were projects that presumably had  
9 been previously approved.

10 MR. AMER: Absolutely, because they were included with  
11 the original grant application and they were part of the  
12 extension request application.

13 So this additional process that is being imposed on  
14 the states is just an effort to now apply new and different  
15 criteria that actually runs contrary to what the appropriations  
16 statute allows, and has absolutely nothing to do with whether  
17 more time is needed or not.

18 And to your Honor's point about lost instruction time  
19 and why you still need to provide this intervention to  
20 students, I did want to mention that in the record—I'll just  
21 read one of the paragraphs from the New York declaration,  
22 paragraph 54 of Docket No. 26. "Without an update or  
23 confirmation that services will resume soon, our largest  
24 educational service provider under EANS—" that's the program  
25 for nonpublic schools "—who provides, among other things,

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1 tutoring services, plans to terminate all employees that they  
2 currently have furloughed. If US DOE is not immediately  
3 required to withdraw the March 28 rescission, there will not be  
4 enough time to hire new staff and get the programs back up and  
5 running for the remainder of the 2024-25 academic year. This  
6 will result in severe harm to students, including lost  
7 instruction time and further lost opportunities to address  
8 learning losses and gaps that were the result of the  
9 pandemic—problems the ARP funding was specifically targeted to  
10 alleviate."

11 I think that gets right at your Honor's point. And  
12 it's not just in the complaint. This is the declaration that  
13 New York submitted, so it's in the record as evidentiary  
14 material.

15 I think just one last point—well, on that—is that  
16 providers of these programs and services know about the  
17 March 28th letter, and they know about the April 3rd letter,  
18 and they know about this process for submitting  
19 project-specific extensions, and they're still not willing to  
20 continue performing under these contracts. So they understand  
21 that this additional process for getting project-specific  
22 extensions doesn't suggest in any way, shape, or form that the  
23 funds are going to start flowing again, and once these letters  
24 like this May 2nd letter that I read from become public, it  
25 will cement the understanding that much of these funds are

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1 going to be yanked and won't be approved.

2 THE COURT: Can you, for the record, just indicate to  
3 whom that letter is addressed and who sent the letter.

4 MR. AMER: Yes. So it's on United States Department  
5 of Education letterhead. It's dated May 2, 2025. So it was  
6 this past Friday. It's to the Honorable Tom Horne, H-O-R-N-E,  
7 State Superintendent of Public Instruction, Arizona Department  
8 of Education, and it's signed by Hayley, H-A-Y-L-E-Y, W. Sanon,  
9 S-A-N-O-N. He's the Principal Deputy Assistant Secretary and  
10 Acting Assistant Secretary in the Office of Elementary and  
11 Secondary Education of the U.S. Department of Education. So we  
12 will file that later today with a cover letter, your Honor.

13 Finally, I think my friend mentioned that the harm  
14 that the Education Department suffers is the harm due to the  
15 fact that had it reviewed the extension requests on a  
16 project-specific basis, it would have been denied because it  
17 would have been given an opportunity to have a closer look. I  
18 don't think there's any record evidence that suggests that the  
19 look that the Department previously gave to these projects,  
20 either when the applications for the grant money was originally  
21 submitted or when the extension requests were previously  
22 reviewed and approved, was anything other than a close look, so  
23 the idea that the Department is somehow being deprived, if this  
24 Court grants the injunction, of an opportunity to take a close  
25 look at these projects I think is contrary to what's in the

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1 record. I think the record suggests that these projects were  
2 specified in the prior grant applications and in the prior  
3 extension requests, that they were looked at, and I think your  
4 Honor even asked my friend whether there's any suggestion here  
5 that the Department didn't give those a close look. So I think  
6 what the Department is saying is that the harm is not doing  
7 something that they actually already did. And that's not harm  
8 at all, your Honor.

9 THE COURT: Can I ask if you could speak to the issue  
10 of whether or not this is a final order, the March 28 letter.

11 MR. AMER: It's absolutely a final order because  
12 there's no reconsideration suggested on the blanket decision to  
13 rescind all of the extension approvals. That's not anything  
14 that's being looked at today by the Department. The letter was  
15 clear, if you look at the language of the letter, that it's  
16 effective immediately, the extension approvals are being  
17 rescinded, it's being modified to expire as of 5 p.m. on  
18 March 28th. There's no tentative nature with respect to that  
19 decision, so it's absolutely final. And again, under  
20 Section 704, even if the Department did say, you know, we'll  
21 reconsider this rescission, as long as they make the rescission  
22 operable effective immediately, it's final under the APA.

23 THE COURT: Thank you.

24 MR. AMER: Thank you, your Honor.

25 THE COURT: Okay. I am going to issue the preliminary

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1 injunction, and we'll talk in a little bit about whether or not  
2 I should require the posting of a bond or whether I should stay  
3 this determination. But first of all, I do find that the  
4 plaintiffs are seeking a prohibitory and not a mandatory  
5 injunction. As they indicate, the last peaceable status in  
6 this case was just prior to the time that Secretary McMahon's  
7 letter of March 28 was issued, and at that time the extensions  
8 were in place. Those extensions were rescinded, and  
9 accordingly, this is a prohibitory injunction.

10 I further find preliminarily that this is a final  
11 order. As Mr. Amer indicated, a decision was made to rescind  
12 all extensions. There was no equivocation in that  
13 determination, and it is operable, which is to say that the  
14 states are required to abide by it, and presumably if they were  
15 to put in a request for reimbursement today, outside of the new  
16 process that has been set up for these funds, it would be  
17 rejected out of hand.

18 I find that the plaintiffs have established a  
19 likelihood of success on the merits on both of their causes of  
20 action with respect to arbitrary and capricious. The  
21 Department of Education changed its mind. I find that the  
22 reason proffered was not a reasonable explanation. As we have  
23 discussed, Congress intended that these funds be made available  
24 to school districts and schoolchildren. There was no reason  
25 other than the fact that the COVID emergency had ended some two

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1 years before. However, clearly, the purpose of the funding  
2 sources of the acts that provided the funding was so that there  
3 can be funding for these programs going forward after the  
4 pandemic emergency was deemed to have ended in order to account  
5 for the loss of educational attainment that schoolchildren had  
6 suffered as a result of remote learning and other difficulties  
7 attendant to the COVID-19 pandemic.

8 And with respect to contrariness to law, as we  
9 discussed, Congress intended that these funds remain available.  
10 Congress intended that the Department of Education be liberal  
11 and flexible in making sure that these programs continued to be  
12 funded, and that the Department of Education not impose  
13 unreasonable obstacles in the way of state agencies looking to  
14 continue to fund those programs. As a result of the  
15 Department's actions, the plaintiffs have established  
16 irreparable harm. There are any number of declarations that  
17 have been submitted that talk about the disruption that has  
18 been caused by the March 28 letter—programs have been halted,  
19 staff has been laid off, infrastructure projects that were  
20 begun had been halted midstream, causing unusable locations  
21 within schools.

22 On the other hand, there's nothing before me to  
23 suggest that the government would be irreparably harmed in any  
24 way by the issuance of the preliminary injunction. These are  
25 funds that have been appropriated for particular uses.

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1 Applications were made and approved with respect to those uses.  
2 Applications were made and approved with respect to extending  
3 the drawdown of those funds. There were substantial reliance  
4 rights that were established by the plaintiffs, which obviously  
5 were interrupted.

6 And again, the public interest and the balance of  
7 hardships here weigh clearly in favor of the plaintiffs, who  
8 have had to disrupt the provision of educational services to  
9 schoolchildren, who have had to halt infrastructure projects  
10 midstream because of the Department of Education's  
11 determination, and for all those reasons, the plaintiffs have  
12 clearly met all of the elements for the issuance of a  
13 preliminary injunction, and one will be issued.

14 I will be signing the form preliminary injunction that  
15 was provided by the plaintiffs.

16 But let's talk about a bond and a stay. Mr. Amer?

17 MR. AMER: Thank you, your Honor.

18 We do address the bond requirement in point 4 of our  
19 reply brief. Obviously, as the Court is aware, there needs to  
20 be a specific finding in the preliminary injunction order,  
21 which can be done orally, obviously, today.

22 We do think there's no dispute that the Court has wide  
23 discretion in setting the bond amount, including setting the  
24 bond amount at 0. I think we're talking about whether the bond  
25 should be 0 up to \$10,000, which is the nominal sum that the

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1 defendants have requested. We think it makes sense for the  
2 amount here to be set at 0 because of the various reasons we  
3 highlight in our brief—namely, that here, this is a situation  
4 where we're seeking to enforce public interests arising out of  
5 a comprehensive federal health and welfare statute. Second  
6 Circuit has noted that that is a sufficient justification to  
7 set the bond at 0. Also, because there is no proof here of  
8 likelihood of harm to the defendants as a result of the  
9 preliminary injunction, which is one of the findings your Honor  
10 just made; that's another reason for justifying a bond at 0.  
11 And finally, we think that where the likelihood of success is  
12 so strong as it is here, that's another reason for setting the  
13 bond at 0. And we would ask, therefore, that the Court set the  
14 bond at 0.

15 I'd also mention that there are any number of cases  
16 that have been decided within the last couple of months where  
17 there have been challenges to this administration's agencies'  
18 actions where bonds have been set at 0.

19 I thank you, your Honor.

20 THE COURT: Mr. Connolly, did you wish to be heard?

21 MR. CONNOLLY: Sure. Just briefly, your Honor, on the  
22 bond.

23 Obviously, Federal Rule of Civil Procedure 65(c)  
24 provides that the Court may issue a preliminary injunction only  
25 if the movant gives security in an amount that the Court



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1 considers proper. Here, we are simply asking, in accordance  
2 with that rule, for the entry of a de minimis bond of \$10,000.

3 Would your Honor like me to address the appellate  
4 issue as well?

5 THE COURT: Let me just deal with the bond.

6 I'm not going to require the issuance or the posting  
7 of a bond. As we've discussed, I find that the plaintiffs have  
8 established a likelihood of success on the merits that is  
9 greater than usual, perhaps even overwhelming. In fact, I was  
10 going to discuss whether the showing that the states have made  
11 would have been enough even to satisfy the test of a mandatory  
12 injunction. So I do find that their likelihood of success on  
13 this case is strong. And as we have been discussing, this case  
14 involves the enforcement of public interest arising out of a  
15 comprehensive federal health and welfare statute. So I will  
16 not require the posting of a bond.

17 On the issue of the appeal, a stay pending appeal,  
18 Mr. Connolly, I'm happy to hear you.

19 MR. CONNOLLY: Certainly, your Honor.

20 The government will confer in light of the Court's  
21 ruling. As your Honor knows, decision whether or not to appeal  
22 rests with the Solicitor General. We would ask that in the  
23 event the Solicitor General determines to appeal your Honor's  
24 ruling, that the Court stay the preliminary injunction pending  
25 a disposition of that appeal. And obviously in the event that

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1 decision is made, we can provide further information in a  
2 letter to the Court, but we would be asking for a stay if an  
3 appeal is authorized.

4 THE COURT: Thank you. Mr. Amer?

5 MR. AMER: Your Honor, we don't think that there is a  
6 need for this Court to issue a stay. This is not a situation  
7 that involves any exigency. There are no planes on the tarmac  
8 about to take off. There is going to be a process where the  
9 states now submit their payment requests as timely requests as  
10 a result of the injunction, the defendants will have an  
11 opportunity to review those timely requests, and in the  
12 interim, they certainly have time to go to the Second Circuit  
13 and seek whatever relief by way of a stay that they feel is  
14 necessary.

15 THE COURT: I will not be staying the implementation  
16 of the preliminary injunction.

17 Is there anything else that we should discuss today,  
18 Mr. Amer?

19 MR. AMER: Nothing from the plaintiffs. Thank you  
20 very much.

21 THE COURT: Mr. Connolly?

22 MR. CONNOLLY: No. Thank you, your Honor.

23 THE COURT: Okay. In that event, we are adjourned.  
24 We'll be issuing the injunction and posting it on ECF.

25 Thank you all for your very, very helpful arguments.  
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